

STATE OF MICHIGAN
COURT OF APPEALS

In re CASTIGLIONE/DOPIERALA, Minors.

UNPUBLISHED

January 22, 2015

No. 322476

St. Clair Circuit Court

Family Division

LC No. 13-000096-NA

Before: BECKERING, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals by right from the trial court order terminating her parental rights to the minor children, CC, KD, and DD, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner filed a temporary custody petition on April 15, 2013, alleging that on April 9, 2013, Children's Protective Services (CPS) observed respondent's home to be in deplorable condition and unsafe for the children. Respondent was living with her father in a home strewn with rotting food and garbage and infested with flies. Clutter and animal feces were found throughout the upstairs. The electricity in the upper level of the house was supplied via an extension cord that ran up the stairs from the main level. The home was heated by electric heaters that posed a safety concern due to the amount of debris and clutter. As of April 10, 2013, respondent's physical health problems rendered her unable to stand. Respondent admitted being depressed and in counseling. Respondent further admitted that her medical issues sometimes prevented her from properly caring for her children and that she needed help. The petition also alleged that in June 2010, CPS had substantiated a case of physical neglect against respondent, based on her home having no plumbing or gas service, which had resulted in CPS referring respondent to several services in 2010, although the children were not removed from her care at that time. The trial court entered an ex parte order removing the children from respondent's care on April 15, 2013.

On May 9, 2013, respondent pleaded no contest to the trial court's assumption of jurisdiction over the children. The trial court ordered respondent to comply with a parent-agency agreement. The parent-agency agreement required that respondent maintain a legal source of income and independent, suitable housing; complete and benefit from parenting classes; attend outpatient counseling; complete psychological, psychiatric and substance abuse assessments; follow all recommendations of her therapist; and refrain from drug and alcohol use.

Petitioner filed a termination petition on April 17, 2014, alleging that the children had been removed from respondent's home due to the home being in a deplorable, unsafe state, and due to respondent's failure to address her mental health issues, and these issues remained unresolved. Respondent was without a reliable source of income and had been unable to obtain independent housing. In lieu of parenting classes, a life skills worker was assigned to advise respondent. Her interactions with the worker had regressed to a minimal standard and demonstrated that she had gained little benefit from the service. A drug screen collected on February 22, 2014 was diluted. Respondent's psychological assessment revealed that she was preoccupied by her medical problems and sense of discouragement, and struggled emotionally in her single-parent role.

The termination hearing was held on June 4, 2014. Courtney Evenigred, a clinician with the NorServ Group outpatient mental health clinic, testified that she worked as respondent's clinical therapist. Evenigred felt that respondent had good stress tolerance and did her best to use her limited supports. Respondent was stressed as she was getting ready to transition out of a shelter in Lapeer to find appropriate housing. Respondent only had three sessions with Evenigred because she had failed to appear for three offered sessions and was terminated from counseling due to noncompliance. Respondent rescheduled one of the sessions, stating that she had forgotten about it, but the other sessions were home visits and no one was home when Evenigred arrived. Respondent also did not appear for a rescheduled home visit in January 2014.

Jessica Leenknecht, a family specialist with Professional Counseling Center (PCC), which offered intensive in-home services, first met with respondent on June 14, 2013. At that time, respondent was living in a shelter and had irregular cash-paying jobs. Her lifestyle was unstable. Leenknecht provided respondent with additional community resources that she could utilize to help with housing and employment. Leenknecht also provided transportation. She went with respondent to apply for jobs and look for housing throughout the area communities. PCC closed respondent's case on October 2, 2013, because respondent was noncompliant and unavailable. Respondent had moved to Macomb County and said she was not available to engage in services because she did not have transportation.

Leenknecht received a second referral for services on December 16, 2013. Respondent's goals in services remained the same—she was to obtain housing and employment and work on budgeting and stress management. Leenknecht brought respondent to the Secretary of State's office in January 2014 to get her driver's license so that she could apply for jobs. On January 15, 2014, respondent obtained employment in an adult foster home. She was living with a friend in Algonac and working on securing suitable housing. When services ended on April 4, 2014, respondent was fully compliant. She had been fired from her job at the foster home on March 14, 2014, but had found a job at a local factory by March 25, 2014. In April 2014, respondent moved back in with her father in Marine City (the same home from which the children had originally been removed).

Leenknecht stated that the first referral she had with respondent was not as successful as the second one. Respondent had been trying. She made progress during the case. As far as Leenknecht knew, respondent still had the same job. Respondent had a strong bond with her children. She was loving and caring and focused on the children's well-being. Leenknecht believed respondent was successful with employment and that she should be able to find

housing. However, Leenknecht testified that respondent's life was not more stable than it was one year earlier. Leenknecht acknowledged that respondent still did not have housing, which had been a goal over the preceding ten months. Respondent had maintained a job for two months, lost the job, and maintained another job for two weeks prior to her case closing. Leenknecht believed that respondent was now on her way to maintaining employment. Respondent's employment did not enable her to obtain housing because she could not afford a down payment and her income was minimal. Leenknecht did not know whether respondent was paying rent.

Foster care worker Tracee Anderson testified that she did not learn that respondent had moved from a shelter in Port Huron to a shelter in Lapeer until a couple of months after she had moved. Respondent did not advise Anderson of her move once they eventually got back in touch with one another. After living in a shelter in Lapeer, respondent moved to a friend's house in Warren.

In October 2013, respondent contacted Anderson because the person she wanted to move in with had a criminal record. Anderson explained that this would prevent family reunification in that home. Respondent planned to save her money while she was living in this residence, so that she could get a house. She earned cash by babysitting, but Anderson did not know whether she would have to pay rent to the owner of the residence. Respondent lived in this home for three or four months.

Respondent then moved in with a friend in Algonac around December or January. After this move, she contacted Anderson, who then visited the home. Respondent's friend was doing home repairs when Anderson arrived. There was no running water and there was a gaping hole in the floor of the kitchen or dining area. Respondent said that they were in the process of remodeling. Even though Anderson told respondent that the house was not an appropriate residence for the children, she still wanted to remain there until the remodeling was finished, and she planned for reunification with the children in that house. Respondent did not believe the house would remain an unacceptable residence for the children, because they were fixing it. At some point, respondent moved back to her father's house, but never contacted Anderson to advise her of that move. Anderson testified that respondent had moved around, but ended up where she had started, making no progress.

Respondent also never maintained steady employment. At the start of the case, respondent was applying for social security disability income benefits, and reported that she could not work. Shortly thereafter, she reported that she had obtained a job at a pickle factory in Lapeer, but she apparently left that job because of issues with her physical health. During the following summer, she occasionally worked at a carnival in Escanaba. Respondent never told Anderson of her plans before she acted, so Anderson did not have exact dates of her employment or job moves. Respondent often told Anderson of her plans after the fact. Anderson testified that respondent had represented that she had worked some cash jobs, such as live-in babysitting, but provided no documentation. In January 2014, respondent found a job at an adult foster care home; however she was terminated from that job for having marijuana in her possession on the job. Anderson never spoke to respondent about this, because she was not able to reach respondent and respondent would not respond to her. Anderson testified that two months of employment was the longest stretch of employment that respondent had maintained. Respondent currently worked as a temporary worker.

Anderson testified that respondent did not appear to have substance abuse issues, but that respondent was ordered to begin drug screens. There was an initial delay in the drug screens because of lack of contact, but she then became compliant.

With regard to visitation, respondent was mostly compliant. However, there were times when she was at the caregiver's home when she should not have been. The caregiver expressed concern that respondent spoke about the case to the children, which she should not have done. At times she used inappropriate, profane language around the children. When Anderson addressed this impropriety with respondent, she was confrontational.

CC was placed with respondent's cousin, and twins KD and DD were placed with their father. Even though the children were so placed, Anderson believed that termination of respondent's parental rights was in the children's best interests because she had not made progress in several areas. Respondent had a history of allowing inappropriate people around the children, and the way she spoke to them made them unhappy. Anderson did not see any progress with counseling. Respondent had made a lot of progress in life skills, as far as having a mentor relationship with the life skills worker, but her progress in reducing barriers was slow. Anderson did state that respondent was bonded with her children.

Anderson explained that DHS had funds to help with reunification if respondent were to maintain stable employment for a period of time. DHS would provide funds for a security deposit and first month's rent, but respondent would need to maintain housing once they provided her with these reunification funds. Anderson did not provide these funds because respondent did not provide documentation that she had steady, stable income.

Respondent submitted two drug screens, one on February 22, 2014, and one on March 7, 2014. Both were negative, but the February screen was diluted. Of more concern to Anderson was the fact that respondent brought inappropriate people to visits, which was a recurring problem. In the year the children were in care, she was never able to progress to unsupervised visits.

Respondent testified on her own behalf. Respondent stated that she lived in Marine City with her father. Respondent admitted that she was living in the same house from which the children were removed, and that there was no electricity in the house. She said that some of the home conditions listed in the petition continued to exist, but that she did not plan for the children to go back to that house. Since she did not plan to have the children live in any of the homes in which she had been living since their removal from her care, she did not see why it was "such a huge issue."

Respondent had been working for Sentech, a temporary employer, and was assigned to Magna Corporation. She testified that Magna Corporation would make her position permanent the following day. Respondent denied having a substance abuse problem.

Respondent testified that she had difficulty obtaining housing because she did not have enough money for a down payment. Respondent stated that she had left the adult foster care home because they did not pay her for all of the overtime hours she worked. Because of this, she sought employment through Sentech. Respondent denied having marijuana at work. She said

that what she had were “energy pills,” which were not in a bottle; respondent was required to throw them away because they smelled. Respondent had not been able to save enough money for a housing down payment, because she had spent “hundreds of dollars” fixing up her father’s truck, which at the time of the termination hearing still needed additional work, so that she could get to work. She had saved \$430 so far, but it was not enough for a housing down payment. She gave her father \$200 a month for rent.

Respondent stated that she was prescribed methadone to treat pelvic fibromyalgia and migraines. Her medical issues had not been resolved. She explained that she was hardly able to sit up straight at the onset of the case, because she was distraught about her children being taken away. Respondent began having pelvic pain nine years earlier when she gave birth to CC. Respondent stopped taking methadone and instead took another pain medication. She also had to take shots for migraines. Respondent said that she was working seven days a week, and she worked overtime when it was available. With overtime, she brought home \$340 weekly.

The attorney for the minor children then called KD’s and DD’s father, who testified that his relationship with respondent was rocky and had progressively worsened. Before respondent’s visits were suspended, the children’s behavior after visits with respondent was poor. They did not listen, and they told his fiancé that respondent had told them that they did not have to listen to her. There was definite improvement in their behavior once respondent’s visits were suspended. He believed that termination of parental rights was in the children’s best interests, because respondent was unstable. According to KD’s and DD’s father, respondent’s decision-making skills were “bottom rung;” he had observed respondent interacting harshly with the children, using inappropriate language, and discussing inappropriate subjects with the children.

After closing arguments, the trial court found that the three largest barriers to reunification were lack of income to afford housing, lack of proper housing, and respondent’s mental health issues. The trial court noted that respondent was living in the same deplorable home, which was a safety hazard, from which the children were originally removed. Respondent had not had consistency in any particular job. She had moved from job to job since the children were removed from her care. It was unclear where the money she earned went. Respondent’s testimony that she had put money into a truck that she did not own made no sense and reflected her poor decision-making process. The trial court noted that the truck was in apparently in “deplorable condition” and that respondent was aware that public transportation was available between her home and her work.

The trial court found clear and convincing evidence to terminate respondent’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), noting that there was no reasonable likelihood that respondent would grasp the necessity of understanding how to provide a home for her children in a safe environment. Respondent demonstrated an inability to understand and an unwillingness to spend money in that effort. She failed to provide proper care and custody or to understand the impact of moving back into homes that were unsuitable for the children because of their conditions. The trial court also determined that termination of parental rights was in the children’s best interests. This appeal followed.

II. STANDARD OF REVIEW

To terminate a respondent's parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) is met by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). This Court reviews the trial court's decision "that a ground for termination has been proven by clear and convincing evidence" for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We take into account the trial court's expertise in judging the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *Miller*, 433 Mich at 337.

III. STATUTORY GROUNDS FOR TERMINATION

Respondent's parental rights were terminated under the following subsections of MCL 712A.19b(3):

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

At the time of the adjudication, respondent was unable to provide the children with an appropriate home environment and she was experiencing mental health issues in the form of depression. By the time of the permanent custody hearing, respondent was still unable to provide the children with an appropriate home environment. While two of the children were placed with their father and the third was in relative care, respondent moved between shelters and friends' homes, but none of the places in which she resided were suitable or safe for her children. By the time the termination petition was filed, respondent had moved back in with her

father, in the home from which the children had originally been removed, even though the conditions in that home had not improved.

Because respondent never demonstrated that she could maintain housing or employment for a sustained period of time, she had not demonstrated the ability to provide for her children's physical needs. During the time she was working and able to save money, she displayed questionable judgment by spending her savings to repair her father's truck, instead of using it toward a security deposit or down payment on a residence. Although respondent argues that she was employed, there was no evidence that she could maintain this employment or a stable lifestyle. Respondent's contention that termination of her parental rights was in error because she was not given adequate services is also without merit. The evidence shows that respondent was provided services but did not benefit from them, and instead failed to comply with therapy, maintain stable employment, or find suitable housing. See *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), superceded by statute in part on other grounds, MCL 712A.19b(5). Thus, termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and (g).

Termination of respondent's parental rights was also proper under MCL 712A.19b(3)(j). Given respondent's poor judgment, inability to recognize environmental safety hazards, and untreated mental health concerns, the children would be at risk of harm in her care. Respondent made inappropriate comments and often used profane language in the children's presence. The evidence showed that the children's behavior worsened after visits with respondent, suggesting that they were experiencing emotional harm from contact with her. Likewise, respondent lacked insight into the dangers posed by her choices in housing. Without the supervision of DHS workers, respondent was incapable of choosing a safe home. When left on her own to find housing, she did not take even basic safety considerations into account. The evidence was therefore sufficient to find that the children would also have been at risk of harm in respondent's care.

IV. BEST-INTEREST DETERMINATION

Finally, the trial court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the minor children. MCL 712A.19b(5). In deciding whether termination is in a child's best interests, the court may consider a variety of factors, including the child's safety and well-being, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011), and whether the parent can provide a safe and stable home, *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The evidence showed that respondent could not provide a suitable home for her children. Any bond they shared was not sufficient to overcome the fact that respondent could not properly care for them. Respondent did not have suitable housing, she had not demonstrated that she could maintain employment for any sustained period, and there was evidence suggesting substance use. It is in the children's best interests to be raised in an appropriate home environment by a caregiver who can provide for their material needs. After a year in protective care, concerns for permanence must prevail, particularly since respondent's progress had been so minimal during the year she was given to rectify the conditions alleged in the petition. Given the lack of evidence that respondent can offer her children a proper home environment, termination of parental rights is in their best interests.

Although not raised by either party, the trial court was “required to consider the best interests of each child individually” and “to explicitly address each child’s placement with relatives at the time of the termination hearing if applicable.” *Olive/Metts*, 297 Mich App at 44. Generally, “[a] trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.” *Id.* at 43.

The trial court met its obligations under *Olive/Metts*. The trial court indicated its awareness that the children were differently situated. The trial court noted that the two younger children were in the custody of their father, which was not considered a relative placement under the statute.¹ The oldest child lived with an aunt, which the trial court specifically noted was a relative placement. The trial court noted the testimony of witnesses about how the children were doing in their placements. In particular, the trial court addressed the wellbeing of the oldest child in relative placement and found that he was “doing great,” his grades had improved, he was happy, and it was in his best interests to remain in this home. The trial court also found that it was in the best interests of the two younger children to remain with their father and that it was in all of the children’s best interests to terminate respondent’s parental rights. We find no clear error in this determination and, accordingly, affirm the order terminating respondent’s parental rights.

Affirmed.

/s/ Jane M. Beckering

/s/ Kathleen Jansen

/s/ Mark T. Boonstra

¹ See MCL 712A.13a(1)(j), which provides that a “relative” for purposes of MCL 712A.19(a)(6) is

an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce.

The definition does not include an individual who is related to the child as “mother”, “father” or “parent.”